

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

David Bourke)
)
)
Plaintiff)
) No. 08-cv-7200
-vs-)
) *(Judge Zagel)*
County of DuPage, Alexander)
McGimpsey, Illinois State Police,)
and Illinois Department of)
Corrections,)
)
Defendants.)

**MOTION TO REQUIRE ILLINOIS STATE POLICE
TO CORRECT ERRONEOUS INFORMATION**

Pursuant to 28 U.S.C. §1367 and 20 ILCS §2635/14, plaintiff, by counsel, moves the Court to grant such equitable relief as may be required to compel the Illinois State Police to correct erroneous information concerning plaintiff in its files.

Grounds for this motion are as follows:

1. Plaintiff's criminal history, as maintained by the Illinois State Police, includes erroneous entries about an arrest in 1979 by the police department of Palos Heights, Illinois, and another arrest in 1979 by the Cook County Sheriff's police. These entries are referred to in the rap sheet as:

- a. NCIC IL0168500, Palos Heights Police Department
- b. NCIC IL0160000, Cook County Sheriff's Office

c. NCIC IL016013A, Cook County State's Attorney

d. NCIC IL016025J, Cook County Circuit Court

2. Plaintiff contends that each entry is erroneous.

3. Plaintiff has requested the Palos Heights Police Department to produce any records about the 1979 arrest (NCIC IL0168500). The Department responded that it has destroyed all of its files from 1979. (Exhibit 1, attached.)

4. Plaintiff has requested the State's Attorney of Cook County to produce records pertaining to all of the entries identified in paragraph 1 above. The State's Attorney's office has responded that, after a diligent search, it has been unable to locate any records. (Exhibit 2, attached.)

5. Plaintiff has unsuccessfully requested the Illinois State Police to correct its records. (Exhibit 3, attached.)

6. Illinois law specifically authorizes a court to grant an "equitable remedy" to correct an erroneous rap sheet under the circumstances of this case. The Court has supplemental jurisdiction to grant such relief pursuant to 28 U.S.C. §1367 or, in the alternative, pursuant to the All Writs Act, 28 U.S.C. §1651.

Wherefore plaintiff requests that the Court grant such equitable relief as may be appropriate to compel the Illinois State Police to correct the following erroneous information concerning plaintiff in its files:

- a. NCIC IL0168500, Palos Heights Police Department
- b. NCIC IL0160000, Cook County Sheriff's Office
- c. NCIC IL016013A, Cook County State's Attorney
- d. NCIC IL016025J, Cook County Circuit Court

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC 830399
200 S Michigan Ave, Ste 201
Chicago, Illinois 60604
(312) 427-3200

attorney for plaintiff

Exhibit 1

Palos Heights Police Department

7607 West College Drive Palos Heights, Illinois 60463

George L. Yott Jr.
Chief of Police

Admin. (708) 448-5060
Fax: (708) 361-9371

October 17, 2013

Law Offices
Kenneth n. Flaxman P.C.
200 S Michigan Ave. Suite 201
Chicago, IL 60604

Dear Mr. Flaxman,

This is in regards to civil case #08-cv-7200 David Bourke (see included). I left a message on your voicemail, October 16, 2013. We no longer have 1979 files. They have been destroyed. If you have any questions, please feel free to call, 708-448-5060.

Jeanine M. Kustak
Palos Heights Police Department
7607 W College Drive
Palos Heights, IL 60463

708-448-5060
jkustak@palosheightspd.org

Exhibit 2



OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

ANITA ALVAREZ
STATE'S ATTORNEY

JAYMAN A. AVERY III
ASSISTANT STATE'S ATTORNEY

500 RICHARD J. DALEY CENTER
CHICAGO, ILLINOIS 60602
312- 603-5440

WRITER'S DIRECT LINE:
312- 603-7780

OFFICE FAX:
312-603-5797 or 312-603-3000

May 13, 2014

Kenneth Flaxman
Via E-Mail

Re: Subpoena Issued in *Bourke v. DuPage*, 08 CV 7200

Dear Mr. Flaxman:

I am in receipt of the *Subpoena in A Civil Case* issued to Jeff McCutchan regarding the above-referenced matter. The *Subpoena* requests any documentation supporting the entries on page 8 (of the Rider to the *Subpoena*) relating to or supporting entries for NCIC IL0168500, Palos Heights Police Department, NCIC IL016013A, Cook County State's Attorney, and NCIC IL016025J, Cook County Circuit Court, and entries on page 8-9 (of the Rider to the *Subpoena*) relating to or supporting entries for NCIC IL0160000, Cook County Sheriff's Office, NCIC IL016013A, Cook County State's Attorney, and NCIC IL016025J, Cook County Circuit Court.

Upon my receipt of the *Subpoena*, I referred the matter to our Office Manager for her assistance in locating and retrieving the file(s). She, in turn, referred the matter to the Supervisor of our warehouse for his help in retrieving the file(s). She also reviewed our Office's computer database to attempt to locate the file(s). Computer records were located that, it was hoped, would lead to location and retrieval of the file(s).

Unfortunately, no one has been able to locate any of the file(s) after numerous attempts to do so. Several requests were made by our Office Manager to warehouse personnel to attempt to locate the file(s). After many diligent searches, Office warehouse personnel have been unable to locate the file(s).

Accordingly, we are unable to produce the documents you requested in the *Subpoena*.
If you have any questions, please contact the undersigned.

Very truly yours,

ANITA ALVAREZ

State's Attorney of Cook County

By:

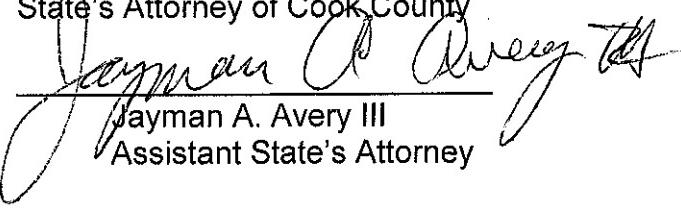

Jayman A. Avery III
Assistant State's Attorney

Exhibit 3

October 22, 2012

Illinois State Police
Bureau of Identification
260 N Chicago St
Joliet, IL 60432

Dear Illinois State Police:

On August 16, 2012, United States District Judge James B. Zagel instructed me to request your agency to review my criminal history to determine if erroneous information previously included had been removed. I enclose a copy of the transcript of proceedings in my lawsuit, *Bourke v. County of DuPage*, 08-cv-7200.

In accordance with Judge Zagel's instructions, I therefore request that your agency review my criminal history to determine if there are any entries other than those arising from my arrests on June 4, 2005 and March 20, 2007. My state identification number is IL [REDACTED] 0; my FBI identification number is [REDACTED]. My date of birth is December [REDACTED] 19[REDACTED]. My full name is David Pierce Bourke.

At various times in the past ten years, records maintained by the Illinois State Police have included erroneous entries about a murder in 2007, "unlawful window peeping" with an arrest in 1979 and a disposition date in 2003, a vehicular homicide in 1979, as well as an expunged arrest in 1998 and a subsequently reversed murder conviction.

Very truly yours,

David P. Bourke
1021 Barnsdale Rd, Unit 4
La Grange Park, IL 60526
(630) 392-1377

cc: Honorable James B. Zagel
Thomas F. Downing, ASA

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2014 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Lisa Ann Smith, DuPage County State's Attorney's Office 503 N. County Farm Road, Wheaton, IL 60187 and James Allen Lang, Illinois Attorney General's Office (100 W), 100 West Randolph Street, Chicago, IL 60601 and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none.

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC 830399
200 S Michigan Ave, Ste 201
Chicago, Illinois 60604
(312) 427-3200
attorney for plaintiff